IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Crl. Misc. Appl. No. 919/ 2001
(Old No. 5986 of 1993)

Smt. Silvia Arora & another
Vs.
State & another

Date of decision:- 16.7.05

A.F.R. (Approved for Reporting)

Not approved for reporting

Initials of Judge

Date:- 16.7.2005

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL

AT NAINITAL

CRIMINAL MISC. APPLICATION NO. 919 OF 2001
(Old No. 5986 of 1993)

1. Smt. Silvia Arora wife of
   Dr. Deepak Arora, founder
   Of Ann Mary School, General
   Mahadev Singh Road, Dehradun.
2. Dr. Deepak Arora principal Ann Mary
   School, General Mahadev Singh Road,
   Dehradun. …….Applicants

Versus

1. The State of U.P.
2. Smt. Pritam Kaur W/o Sh. A.S. Kalia
   R/o 18, Balliwala Chowk, P.O. Kanwali
   Dehradun. .Opposite Parties

Dated :- 16-7-2005

Hon'ble J.C.S. Rawat, J.

This is a petition under Section 482 Cr.P.C. for setting aside the order dated 4-3-1993 passed by the Judicial Magistrate Dehradun in Case No. 509/92 and 28-1-1993 passed by First Additional Session Judge, Dehradun in Criminal Revision No. 112/92.

The facts are that the son of respondent No. 2 was admitted in the school of the applicants in the year 1987. The respondent No.2 has withdrawn from the school her son master Harpreet in the year 1990 and obtained transfer certificate from the school. He could not be admitted in any other institution. He came to the school of the applicants to again admit her child. The applicants refused to admit her child and treated them abusively. Thereafter the matter was reported to the police. The matter was compromised on 21-1-1992 and it was decided that the son of respondent no.2 was admitted in the school in Class IInd in the year 1992.

On 1-3-1992 at about 10 a.m. the daughter of the complainant respondent No.2 and her neighbour Ashok Khanna reached the school and requested to provide admission from the applicants did not give any admission form to them and started hurling the abuses. Hence, the started to remove them from the office and Marpeet took place between the parties. The matter was reported to the police. The police did not lodge the FIR and the complainant filed the complainant before the Magistrate.

The complainant adduced her statement under Section 200 Cr.P.C. and also of her witnesses under Section 202 Cr.P.C. The Magistrate dismissed the complainant under Section 203 Cr.P.C. Feeling aggrieved by the said order the complainant preferred revision before the Session Judge and the learned First Addition Session Judge set-aside the order of the Magistrate and the parties were directed to appear before the Magistrate on 17-2-1993.

I have herd Sri Sandeep Tandon learned counsel for the applicants, Sri Ramji Srivastava learned counsel for the respondent No.2 and Sri Sudhir Kumar Chaudhary, learned AGA for the State. Also perused the record.

The learned counsel for the applicants contended that the revisional court erred in holding that there was a prima-facie case against the applicants. It was further contended that no incident took place as alleged by the applicants and the respondent No.2 concocted a false story because the applicants had not given admission to the child in the school. The learned counsel of the respondents refuted the contentions and submitted that the respondent No.2 has adduced the evidence of the complainant

herself as well as her witnesses before the trial court and there was a prima-facie case against the applicants.

At the out set I would like to observe that the parties have filed some papers before the court which were not before the trial court at the time of passing of the impugned order. It is well settled position of law that those documents which have not been filed before the trial court. This court cannot consider it. This court is not supposed to evaluate the factual position. The this court can only hold on the basis of the record of trial court as the whether there is a prima facie case against the applicants or not.

I have gone through the order of the Magistrate. Learned Magistrate has not given any cogent reason for not accepting the evidence of the complainant as well as her witnesses. The revisional court has considered this aspect and found that the complainant produced three witnesses before the trial court and all the witnesses have supported the version of the complainant. There is no discrepancy in the statements of the witnesses. The statements clearly reveal that there is a prima-facie case against the applicants. I am completely in agreement with the findings of the revisional court and I do not find any ground to interfere with the same.

In view of the above discussions the petition has no merit and is dismissed.

(J.C.S. Rawat, J.)

Dated 16-07-2005
MPS